

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

AVIS V. DRUMMOND, )  
Plaintiff, )  
vs. )  
CAROLYN W. COLVIN, )  
ACTING COMMISSIONER OF SOCIAL )  
SECURITY ADMINISTRATION, )  
Defendant. )

Case No. 2:13-cv-01247-GMN-CWH

## **FINDINGS AND RECOMMENDATION**

14 This matter was referred to the undersigned Magistrate Judge on Plaintiff's Application for  
15 Leave to Proceed *In Forma Pauperis* (#1), filed on July 15, 2013.

16 Pursuant to 28 U.S.C. § 1914(a), a filing fee of \$350.00 is required to commence a civil action  
17 in federal district court in addition to a new \$50 administrative fee, effective May 1, 2013, for a total of  
18 \$400. The court may authorize the commencement of an action “without prepayment of fees and costs  
19 or security therefor, by a person who makes affidavit that [s]he is unable to pay such costs or give  
20 security therefore.” 28 U.S.C. § 1915(a).

21 Plaintiff submitted the affidavit required by § 1915(a) to show that she is unable to prepay fees  
22 and costs or give security for them. In Plaintiff's Application to Proceed *In Forma Pauperis*, Plaintiff  
23 reports that she receives \$680 in worker compensation per month and has \$3,002 in assets.

24 Additionally, Plaintiff indicates that her total amount of debt is none and monthly expenses are \$1,620.  
25 Plaintiff also receives \$1,050 per month from her mother to pay her rent on a loan basis. Based on this  
26 information, the Court finds that Plaintiff's income is sufficient to pay the filing fee in this case. *See*  
27 *Ross v. San Diego County*, 2008 WL 440413 (S.D. Cal. Feb. 14, 2008) (finding plaintiff did not qualify  
28 to proceed *in forma pauperis* where she received \$2,100 in disability payments, owned a car and house,  
and "carried significant debt"); *see also Samuel v. Nat'l Health Sys., Inc.*, 2006 WL 2884795 at \*1

1 (E.D. Cal. Oct. 10, 2006) (denying IFP application where plaintiff received \$752.40 per month in  
 2 Supplemental Security Income and had received a \$10,000.00 judgment and owned a van valued at  
 3 \$500.00) (*citing Green v. Cotton Concentration Co.*, 294 F.Supp. 34, 35 (D.C. Tex. 1968) (affidavit of  
 4 indigency insufficient to establish indigency where both employed plaintiffs earned less than \$350);  
 5 *Matter of Anderson*, 130 B.R. 497, 500 (W.D. Mich. 1991) (earnings of \$950 per month insufficient to  
 6 show indigency where poverty level in Michigan was \$6,620 per year); *In re Fontaine*, 10 B.R. 175,  
 7 177 (D. R.I. 1981) (no indigency where weekly net pay of \$132, no dependents, and lived with mother  
 8 to whom she paid \$25 per week); *Rucker v. County of Santa Clara*, 2003 WL 21440151 (N.D. Cal.  
 9 June 17, 2003) (sufficient showing of indigency where plaintiff received \$748.42 per month, and that  
 10 amount was exceeded by his outstanding monthly expenses and debt)).

11 Plaintiff's income and other assets exceed her expenses. Accordingly, the Court finds that  
 12 Plaintiff has not satisfied the indigency requirement of 28 U.S.C. § 1915(a)(1) and she is able to pay the  
 13 costs of commencing this action. Having concluded that Plaintiff is not entitled at this time to proceed  
 14 *in forma pauperis*, the Court need not screen the complaint under 28 U.S.C. § 1915(e)(2)(B), which  
 15 requires the dismissal of the case at any time if the Court determines that it is frivolous or malicious or  
 16 fails to state a claim upon which relief can be granted or seeks monetary relief against a defendant who  
 17 is immune from such relief.

18 Based on the foregoing and good cause appearing therefore,

19 **RECOMMENDATION**

20 **IT IS RECOMMENDED** that Plaintiff's Application to Proceed *in Forma Pauperis* (#1) be  
 21 **DENIED**. Plaintiff should be required to pay the filing fee of \$400.00 within thirty days from the date  
 22 that an Order denying Plaintiff's Application is entered. Failure to comply with that Order will result in  
 23 the Court recommending dismissal of this action.

24 **NOTICE**

25 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in  
 26 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held  
 27 that the courts of appeal may determine that an appeal has been waived due to the failure to file  
 28 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also

1 held that (1) failure to file objections within the specified time and (2) failure to properly address and  
2 brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual  
3 issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt*  
4 *v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

5 Dated this 16th day of July, 2013.

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8 **C.W. Hoffman, Jr.**  
9 **United States Magistrate Judge**

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